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No. 587

In the Supreme Court of the United States

OCTOBER TERM, 1958

UNITED STATES OF AMERICA, APPELLANT

v.

EVETTS HALEY, JR.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

REPLY TO STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D.C.

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Appellee suggests (Br. 3, 10) that *Wickard* v. *Filburn,* 317 U.S. 111, does not control the issue in this case, on the ground that the penalty here involved was applied to unharvested wheat. But appellee's own admission at the trial indisputably establishes that his wheat was "harvested" with a "combine" and that the wheat was further processed and then fed to livestock on his farm, which livestock were then sold (Tr. 107–112). Accordingly, the decision in *Wickard* v. *Filburn* is squarely applicable. 317 U.S. at 127–128.

Reference to the district court's opinion (see J.S. 7) shows that the court assumed that appellee's wheat

was harvested and fed to livestock. The court then disposed of the case solely on the theory that the Agricultural Adjustment Act of 1938 is unconstitutional as here applied because wheat consumed on the farm, rather than marketed as such, is not subject to the commerce power. This theory is untenable under *Wickard* v. *Filburn*. Accordingly, summary reversal of the district court's judgment is appropriate, with remand of the cause to the district court for such further proceedings as may be necessary to determine all questions, other than constitutionality of the statute, which are in issue.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

JANUARY 1959.

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